

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC., ARUBA NETWORKS, INC.,
HEWLETT PACKARD ENTERPRISE COMPANY, and HP, INC.,
Petitioner,

v.

MOBILE TELECOMMUNICATION TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2016-00768
Patent 5,659,891¹

Before the Honorable MEREDITH C. PETRAVICK, SCOTT A. DANIELS, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

**PETITIONERS' OBJECTIONS TO PATENT OWNER'S
DEMONSTRATIVES**

¹ Case IPR2016-00766 has been joined with the instant proceeding.

Pursuant to the Board’s Order (Paper 40 at 2), Petitioners Aruba Networks, Inc., Hewlett Packard Enterprise Company, HP, Inc. and ARRIS Group, Inc. (collectively, “Petitioners”) object to certain of Patent Owner’s demonstrative exhibits as specified below. Petitioners have met and conferred in good faith with Patent Owner Mobile Telecommunication Technologies, LLC (“Patent Owner”) on June 14, 2017, with additional email communications on June 15 and 16, 2017, in an attempt to resolve its objections, but the parties were unable to reach agreement.

Petitioners object to slides 14 and 23–25 on the basis that they contain new argument and evidence not presented or cited in Patent Owner’s Corrected Response (Paper 42). *See* Paper 14 (Scheduling Order) at 3 (“any arguments for patentability not raised in [Patent Owner’s] response will be deemed waived”); *IBM v. Intellectual Ventures II LLC*, IPR2015-00089, Paper 41 at 3-4 (PTAB Jan. 14, 2016) (“To the extent slides 14, 35, 48, and 67 include citations to the Williams Declaration not included in the Response, Patent Owner is precluded from using them [in its demonstratives]”); *Cisco Sys., Inc. v. Crossroads Sys., Inc.*, IPR2014-01544, Paper 50 at 11, n.8 (PTAB Jan. 29, 2016) (“Although [Patent Owner] disputed whether Petitioners articulated a sufficient reason to combine the references in its Preliminary Response, it waived this argument by not including it in its Patent Owner Response.”); *Funai Elec. Co. v. Samsung Display Co.*, IPR2015-01468, Paper 40 at 49 (PTAB Dec. 27, 2016) (argument made in

Preliminary Response deemed waived when not included in Patent Owner Response).

Specifically, slides 14 and 23-25 contain new argument regarding “Dr. Min” and include figures that were never presented or cited in Patent Owner’s Corrected Response (Paper 42) (and likewise not presented in Patent Owner’s Response (Paper 28)). On slide 14, Petitioners object to the language in the table referring to Dr. Min (“Dr. Min’s opinion”), whose name was never mentioned in Patent Owner’s Corrected Response. On slide 23, Petitioners object to the Title (“Opposing expert Dr. Min...”), first bullet point (“Regarding the exemplary mask...”), and the two annotated figures, none of which were discussed or cited in Patent Owner’s Corrected Response. Petitioners object to the entirety of slide 24, which references “Dr. Min” and includes an annotated figure never discussed or cited in Patent Owner’s Corrected Response. On slide 25, Petitioners object to the annotated figure, which was never included or discussed in Patent Owner’s Corrected Response.

Patent Owner contends that this material is supported by its Corrected Response (Paper 42) at 22; Ex. 2011 ¶¶ 49-51, 130, Appendix F; and Ex. 2005. But Paper 42 and Ex. 2011 ¶¶ 49-51 do not mention “Dr. Min” at all. Likewise, the figures presented on slides 14 and 23–25 are not discussed or mentioned anywhere in Patent Owner’s Corrected Response (Paper 42) at 22 and Ex. 2011

¶¶ 49-51. Furthermore, Patent Owner did not cite to or discuss at all Ex. 2011 ¶ 130 and Appendix F, and Ex. 2005 anywhere in its Corrected Response.

Accordingly, Patent Owner has waived any argument contained therein and any reliance on such evidence. Paper 14 at 3; *see also* Petitioners' Corrected Reply, Paper 44 at 1, n. 2. Nor would it even be proper for Patent Owner to "incorporate by reference" arguments not made in its Patent Owner Response. 37 C.F.R. § 42.6(a)(3).

If deemed necessary, Petitioners are available for a telephone conference at the Board's convenience to discuss Petitioners' objections.

Dated: June 16, 2017

Respectfully submitted,

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